

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

) Respondent,

v.)
Reginald John Paul Chief Goes Out)

) Appellant.

) NO. 42289-1-II

) STATEMENT OF ADDITIONAL
GROUND'S FOR REVIEW

I, Reginald Chief Goes Out, have received and review the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

- Poor jury instructions - The instructions given to the jury were misleading and, thus, deprived me of a jury that was properly apprised of the law. In order for jury instructions to be sufficient, they must be readily understood and not misleading to the ordinary mind. Proper jury instructions for the special verdicts must similarly inform the jurors how to answer "yes" or "no," both individually and collectively. Though unanimity is required to find the presence of a special finding increasing the maximum penalty, it is not required to find the absence of such a special finding. The jury instruction here stated that unanimity was required for either determination. To require the jury to be unanimous about the negative - to be unanimous that the state has not met its burden - is to leave the jury without a way to express a reasonable doubt on the part of some jurors. Because Instruction 53 did not properly inform the jury that anything short of a unanimous "yes" decision mandated a collective special verdict of "no," the instruction did not

accurately inform the jurors of the law and, thus, was erroneous. When unanimity is required, jurors with reservations might not hold to their positions or may not raise additional questions that would lead to a different result. We cannot say with any confidence what might have occurred had the jury been properly instructed. We therefore cannot conclude beyond a reasonable doubt that the jury instruction error was harmless. In accordance with State v. Ryan, No. 94-1726-1, 2011 WL 1239790 and State v. Bosshaw, 169 Wn.2d 133, 234 P.3d 195 (2010), it is manifest constitutional error to instruct a jury that it must be unanimous in order to find the state failed to prove an aggravating factor. As was the case in Ryan, the jury was so instructed here. The Trial Court in this case instructed the jury that if it found the defendant guilty of the firearm enhancements, it would then fill out a special verdict form as to whether Chief Goes Out was armed with a firearm. The Instruction, however, informed the jury that in order to answer the special verdict form "no," the jury must unanimously have a reasonable doubt as to whether Chief Goes Out was armed with a firearm. This is similar language if not the exact language that was recently held intended to constitutional error in Ryan. The Supreme Court held the instruction relieved the state of its burden to prove its allegations beyond a reasonable doubt. The jury had questions that were not clarified. Where a jury's question to the Court indicates an erroneous understanding of the Applicable Law, it is incumbent upon the Trial Court to issue a corrective instruction. Abuse of discretion is not issuing a clarifying instruction.

Supporting Case Law:

State v. Bosshaw, 234 P.3d 195, 169 Wash.2d 133 (Wash. 07/01/2010)

State v. Campbell, No. 94-1732-7-T (Wash. App. Div. I on 04/12/2011)

State v. Kies, 164 Wn.2d 798, 194 P.3d 212 (2008)

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State v.
State of Washington v. Niles
Ground 2
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Additional Grounds
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pursuant to C.R. 3.3(f)(1), C.R. 3.3(f)(2), or "for administrative necessity". None of the boxes were checked and the continuance form was never signed by a judge. The October 25th, 2010 trial date was continued to December 10th, 2010. On December 10th, 2010 the case was continued to March 15th, 2011. Reasons given were time was needed to finalize plea agreement and if no plea agreement was reached witness's needed to be interviewed. I signed the continuance form. On March 15th, 2011 the scheduled trial date, the case was continued at the request of both attorneys. I refused to sign that order continuing the trial date. Reasons given to the court for the continuance were that two witness interviews remained to be done, those witness's had failed to appear for interviews 3 times. Trial was continued to March 29th, 2011. On March 29th, 2011 it was continued for two days to the 31st because there was an interview that had just been done and there was a witness that was out of state until April 6th, 2011. Both attorneys signed that order of continuance setting it over two days to March 31st, 2011. I wrote "under duress" on my signature. The state, as the moving party, had the burden of exercising due diligence when it's witness's failed to appear for previous interviews. State failed to exercise due diligence requesting a continuance based on those witness's unavailability. But the state gave no reason why it could not have had Raymond Allen and Brandon Allen testify out of order, if necessary, if the trial had begun as scheduled on March 15th, 2011. (December 10th, 2010 to March 15th, 2011 is 99 days). The state gave

no reason why a continuance was the only option. The state simply did not make the requisite showing of due diligence. The state never subpoenaed the witness's before requesting a continuance. The state did not subpoena Raymond Allen or Brandi Allen ahead of time, and the state did not subpoena Raymond Allen or Brandi Allen ahead of time, and as such, the record is underdeveloped on issues such as when Raymond Allen and Brandi Allen would be available and what steps the state could have taken to ensure both Raymond Allen and Brandi Allen's presence. The state failed to exercise due diligence before seeking a continuance based on the Allen's unavailability. The state failed to show that the Allen's were unavailable and that a continuance was required for administration of justice. The state did not subpoena the witness's even though he could have done so legally. The record does not show that the state took any steps to subpoena them, or to preserve their testimony, or that it offered to do so.

Supporting Case Law:
Norman Jackson, No. 39321-2-II (Wash. App. Div. 2
state of Washington v. Norman Jackson, No. 39321-2-II (Wash. App. Div. 2 on 1/20/2009)
State v. Beasley, 157 Wash. App. 100 (Wash. App. Div. 2 on 1/20/2010)
State v. Yaden, No. 39133-8-II (Wash. App. Div. 2 on 3/10/2010)

Remedy for Denial of Speedy Trial: Dismissal as remedy for denial of speedy trial is not an "extreme" measure; indeed, it is the only possible remedy even where accused, were serving time in prison already does not claim it prejudiced his defense. Strunk v. U.S., 15

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Additional grounds to object to justness

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